IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8827 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVIND ALIAS MUNNO BHERULAL JINGER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8827 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MR RC KODEKAR, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/09/2004

ORAL JUDGEMENT

By means of filing this petition, the petitioner

has challenged the order of detention dated 21-4-2004 passed by the Police Commissioner, Ahmedabad City, and he has been branded as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

2. Ms.M.U.Mishra, learned advocate for the petitioner has raised specific contention that the petitioner has been branded as a dangerous person on the basis of three criminal cases registered against him. Out of which, two cases are registered with Naroda Police Station being C.R.No.428 of 2003 dated 22-11-2003 and C.R.No.I-167 of 2004 dated 30-3-2004 and the third is registered with Bapunagar Police Station C.R.No.I-126 of 2004 dated 9-4-2004. It is argued by her that at the time of passing the detention order, the detenu was in judicial custody as reflects from page 25 of the compilation Annexure-B. According to her, the detaining authority has not considered the aspect that if the detenu is actually involved in the offence, he would have been arrested and granting of his bail would have been opposed by the authority and if bail is granted, authority would have gone for cancellation of bail which aspect has not been considered by the detaining authority and, therefore, there is non-application of mind on the part of the detaining authority and, hence, continued detention is illegal. He has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of

available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

3. Learned AGP, Mr.R.C.Kodekar, has shown apprehension in view of the ensuing Navratri festival and hence, requested for imposing stringent conditions of marking presence.

4. Thereafter, Ms.K.U.Mishra has made a voluntary statement at the bar that the petitioner, if released, will not enter into the limits of Police Commissioner, Ahmedabad City as well as Ahmedabad (Rural) till Diwali festival is over. The petitioner will also inform the Naroda Police Station as to the address of his stay on his release.

5. It is to be noted that the petitioner was declared as a dangerous person on the basis of his activity for which complaints have been registered with various Police Stations mainly for snatching away the golden chain of the passers-by. However, there is non-application of mind on the part of detaining authority as the detenu was in judicial custody while passing the impugned order of detention and hence, in view of the judgment relied upon by the learned counsel for the petitioner rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained. However, looking to the seriousness of the offence and also keeping in mind the apprehension shown by the learned AGP and voluntary statements made by the learned counsel for the petitioner pursuant thereto, some conditions are to be imposed.

6. The petition is allowed. The impugned order of detention dated 21-4-2004 passed against the detenu Govind alias Munno Bherulal Jinger is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. He shall also mark his presence before the concerned Police Station once in every ten days any time between 10.00 a.m. and 2.00 p.m. for a period of four months. The petitioner shall not enter into the limits of Police Commissioner, Ahmedabad City as well as Ahmedabad (Rural) till ensuing Diwali festival is over, but for the purpose of marking his presence, he is at liberty to enter the limits and shall leave the limit immediately after

marking presence. Rule is made absolute accordingly. Direct service is permitted. Copy of this order be given to the learned AGP, Mr.R.C.Kodekar for informing the concerned Police Station.

(R.P.DHOLAKIA,J.)

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